IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

TRC.No. 530 of 2001

TA.201/1997 of KERALA AGRL.INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH-II, PALAKKAD

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PETITIONER/APPELLANT :

M/S. P.K. UTHIPPU AND BROTHERS,
ARECANUT MERCHANTS, PAZHANJI,
THRISSUR DISTRICT, REPRESENTED BY PARTNER,
P.T. SIMON.

BY ADV. SRI.C.K.THANU PILLAI

RESPONDENT/RESPONDENT:

THE STATE OF KERALA.

BY SR. GOVT.PLEADER SHRI MOHAMMED RAFEEQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 03/07/2007 ALONG WITH T.R.C. No. 535 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C.Nos.530 & 535 of 2001

Dated, this the 3rd day of July 2007

O R D E R

H.L.Dattu,C.J.

T.R.C.No.530 of 2001 arises out of an order passed by the Sales Tax Appellate Tribunal, Additional Bench, Palakkad in T.A.No.201 of 1997 dated 23rd January, 2001, for the assessment year 1990-91. T.R.C.No.535 of 2001 arises out of the order passed in T.A.No.200 of 1997 dated 23rd January, 2001 for the assessment year 1989-90.

2. In both these Tax Revision Cases, parties are common. Issues raised are also common. Therefore, they are clubbed together, heard and disposed of by this common order.

3. The assessee is a dealer registered both under the Kerala General Sales Tax Act ("KGST Act" for short) and Central Sales Tax Act ("CST Act" for short). He is doing business in arecanut. He purchases arecanut from unregistered dealers and effect consignment sales.

4. The assessee has raised several questions of law for our consideration and decision. At the time of hearing of these Tax Revision Cases, learned counsel Sri.C.K.Thanu Pillai, appearing

for the assessee, would submit that he would confine these revision petitions only to issue No.3. The said issue is whether the Tribunal is justified in upholding levy of tax at the rate of 8% on gunny bags ignoring the notification issued in SRO.No.492 of 1990.

5. The assessing authority while computing the assessments for the aforesaid two assessment years, has levied tax at the rate of 8% on the sale of gunny bags. Before the first Appellate Authority, the appellant, though had raised several contentions, had concentrated primarily on the question whether the assessee is liable to pay tax on the purchase turnover of arecanuts. This has been answered by the first Appellate Authority.

6. Aggrieved by the said order, the assessee had filed appeals before the Tribunal. In the appeal memorandum the assessee has taken up the issue which is framed in these revision petitions, but at the time of arguing the matter before the Tribunal, the same might not have been canvassed. In paragraph 2 of the order the Tribunal noticed as under:

> "When the appeal was posted for hearing Sri.C.K.Thanu Pillai, Advocate appeared on behalf of the appellant. The only contention raised by the appellant is that the lower authorities ought to have found that the appellant being the last purchaser of arecanut in this state and liable to tax as such is not liable to be assessed for turnover tax in view of

> exemption granted by SRO.717/88 by which turnover tax on arecanut was restricted to the purchase previous to the last purchase in the state."

7. A reading of the aforesaid paragraph in the order passed by the Tribunal would clearly demonstrate that though the appellant had taken up several contentions including the contentions canvassed at the time of hearing of these revision petitions, but had only concentrated on the issue that in view of the notification issued by the State Government whether the assessee is liable to be assessed for turnover tax in view of the notification issued by the State Government.

8. In our opinion, what is urged but not argued, for the first time, cannot be allowed to be urged and argued in a revision filed before this Court, for the reason that the parameters of the revisional jurisdiction of this court is statutorily defined. The Statute while creating and entrusting of the revisional jurisdiction to this Court has made it clear that a revision petition can be entertained by this Court only on two grounds. Firstly, the Tribunal must have failed to decide a question of law urged and argued before it or, secondly, erroneously decided the question of law urged and argued before it.

9. In the instant case, though the assessee has raised the

issue which he has framed for our consideration in the revision petition, has not argued the same before the Tribunal. Therefore, it cannot be said that the Tribunal has failed to decide a question of law or has erroneously decided a question of law. In that view of the matter, we cannot accept the submission made by the learned counsel, Sri.C.K.Thanu Pillai, that he had argued the said issue before the Tribunal but the same was not considered by the Tribunal. In that view of the matter, these Tax Revision Cases are dismissed.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

TRC.NOS.530 & 535/2001

O R D E R

3rd July, 2007